

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7466

Investigation into Petition Filed by Vermont Department)
of Public Service Re: Energy Efficiency Utility Structure)

Order entered: 4/19/2011

ORDER RE: ORDER OF APPOINTMENT FOR CITY OF BURLINGTON ELECTRIC DEPARTMENT

I. INTRODUCTION

The Public Service Board ("Board") concluded in its August 20, 2010, Order in this proceeding that it would grant an Order of Appointment to the City of Burlington Electric Department ("BED")¹ to serve as an Energy Efficiency Utility ("EEU") in its service territory.² The Board directed me to conduct further proceedings related to the development of a recommended Order of Appointment.

In this Proposal for Decision, I recommend that the Board issue the attached Order of Appointment to BED. In addition, I specifically ask parties to comment on whether further revisions should be made to the guidelines for combined-heat-and-power systems that were included as Appendix B to the VEIC Order of Appointment and that I have modified and included as Appendix B to the attached BED Order of Appointment.³

II. PROCEDURAL HISTORY

At the January 5, 2010, status conference at the beginning of Phase 2 of this proceeding, the parties agreed that the Phase 2 issues could be grouped into three separate, but related,

1. BED is currently providing Energy Efficiency Utility services in its service territory.

2. Order of 8/20/10 at 71 (Order paragraph 5). In that same Order, the Board determined that it would also grant an Order of Appointment to Vermont Energy Investment Corporation ("VEIC") to serve as the statewide EEU known as Efficiency Vermont. The Board issued an Order of Appointment to VEIC on December 20, 2010.

3. As explained further below, Appendix B (guidelines for combined-heat-and-power systems) was not included with the proposed Order of Appointment that BED filed. I have modified the version of these guidelines that was attached to VEIC's Order of Appointment and included the revised version as Appendix B to my proposed Order of Appointment for BED.

"tracks" — Phase 2 Issue Resolution, Initial Overall Performance Assessments, and the Department of Public Service ("DPS") Benchmarking Study. The schedules of the three tracks were closely coordinated.

The Phase 2 Issue Resolution track includes: (1) specific substantive issues that the Board determined needed further discussion before they could be resolved; (2) the development of a model Order of Appointment; and (3) the development of a "Process and Administration" document that describes the overall EEU program structure under the Order of Appointment model.⁴

On June 25, 2010, the Board issued an Order ("June 25 Order") resolving many of the specific substantive issues included in the Phase 2 Issue Resolution track with the intention that the Board's decisions regarding these issues would be incorporated into the draft Order of Appointment and Process and Administration documents then under development by the parties.⁵ On October 6, 2010, the Board issued an Order modifying one aspect of its June 25 Order. Specifically, the October 6 Order changed the reassignment of certain responsibilities that previously were performed by the Contract Administrator.

Between April and August 2010, the parties filed six versions of the draft Process and Administration document, and four versions of a draft Order of Appointment for VEIC. These were discussed at six workshops that I conducted, and at various negotiating sessions among only the parties.

On September 3, 2010, the DPS filed the final proposed Order of Appointment for VEIC and the final proposed Process and Administration document.⁶

On October 18, 2010, BED filed a proposed Order of Appointment for BED (the "proposed BED Order of Appointment"), which I am admitting into evidence as exh. BED-8.

4. The Process and Administration document has been referred to in earlier Board orders in this proceeding as the Comprehensive Document.

5. The parties developed the Process and Administration document with the understanding that it would apply to all EEUs appointed by the Board. The draft Order of Appointment then under development by the parties was an Order of Appointment for VEIC. However, parties expected that VEIC's Order of Appointment would be the starting point for the development of an Order of Appointment for BED.

6. See, pages 3-4 of the Board's 12/20/10 Order for more information about the comments and reply comments filed on the final proposed Order of Appointment for VEIC and the final proposed Process and Administration document.

Any party wishing to object to the admission of exh. BED-8 into evidence should do so in its comments on this Proposal for Decision so that the Board may rule on any objections.

No party filed comments on the proposed BED Order of Appointment.

On December 20, 2010, the Board issued an Order of Appointment to VEIC. On that same date, the Board approved the Process and Administration Document.

On February 17, 2011, the Clerk of the Board sent the parties a memorandum requesting that BED respond to certain questions regarding Attachment A to the proposed BED Order of Appointment.⁷ The memorandum included a deadline for other parties to file comments on BED's responses to these questions, as well as a deadline for any party to file an objection to the inclusion of BED's responses or other parties' comments in the evidentiary record in this proceeding.

On March 4, 2011, BED filed its responses to these questions. These responses included a corrected version of Attachment A to the proposed BED Order of Appointment. No party filed any comments on BED's responses, or any objections to the inclusion of BED's responses in this docket's evidentiary record. Therefore, I am admitting BED's responses into the record as exh. BED-9.

Pursuant to 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings of fact and conclusions of law to the Board.

III. FINDINGS

1. The proposed BED Order of Appointment sets forth the terms of BED's appointment as an EEU, including the effective date, the length of the appointment, BED's responsibilities as an EEU, and the terms governing BED's cost reimbursement. Exh. BED-8 at 3-9.
2. Under the terms of the proposed BED Order of Appointment, the Appointment would be effective on the date of the Order's issuance, and the period between the date of the Appointment and January 1, 2012, would constitute the Transition Period. Exh. BED-8 at 3.

7. Attachment A to the proposed BED Order of Appointment shows BED's EEU budgets for the 2009-2011 period.

3. The proposed BED Order of Appointment includes a plan governing the Transition Period. Exh. BED-8 at 12-15.

4. Attachments A and B to the Transition Period plan set forth BED's budgets, goals and Quantifiable Performance Indicators ("QPIs") for the Transition Period. The Transition Period plan provides that BED's budgets, goals and QPIs for the Transition Period will be stated as if the Transition Period included the entire January 1, 2009, through December 31, 2011, performance period. Exh. BED-8 at 12, Attachment B; exh. BED-9 at 3.

IV. DISCUSSION

I commend the parties to this proceeding on their collaboration regarding the BED Order of Appointment. While the parties' extensive discussions over several months focused primarily on a draft Order of Appointment for VEIC, it is apparent from a comparison of the two documents that BED's draft Order of Appointment built on that previous work. In particular, as noted in the cover letter accompanying BED's filing, BED and the DPS worked collaboratively to reach agreement on the proposed BED Order of Appointment. The broad consensus regarding the content of the proposed BED Order of Appointment is reflected in the fact that no party filed comments on this document.

Overall, the proposed BED Order of Appointment sets forth appropriate terms for BED's appointment. The proposed Order of Appointment addresses a wide range of issues; most aspects of the document are not specifically discussed in this Proposal for Decision, except to the extent necessary to address substantive issues I have identified with the document. I have carefully reviewed the portions of the proposed BED Order of Appointment not specifically addressed herein, I find them reasonable, and I recommend that they be approved by the Board.

In reviewing the proposed BED Order of Appointment, I identified areas where I believe substantive changes are necessary to accurately reflect the parties' intent or previous Board decisions in this Docket. For example, the word "will" is used in several places where "shall" should be used because I believe the parties intended for the Board to require an entity to perform an action. I have changed these terms when appropriate in the documents.

More specific changes to the document are described below. Many of these are the same changes that the Board made to the Order of Appointment for VEIC. Since the Board is appointing BED and VEIC to provide essentially the same energy efficiency services, it is appropriate for the two Orders of Appointment to be as similar as possible, except for those differences necessary to reflect the fact that BED is a regulated electric distribution utility while VEIC is not. This will ensure that customers in BED's service territory will be treated in as similar a manner as possible to customers in the rest of the state with respect to the provision of these energy efficiency services. I have modified the proposed BED Order of Appointment with this goal in mind.

I have incorporated all these substantive changes, as well as several non-substantive typographical changes, into the attached BED Order of Appointment, and recommend that the Board adopt them. Parties should review the changes and identify any areas of concern and any additional recommended typographical changes in their comments on this Proposal for Decision. To facilitate parties' review, I have attached a redline/strikeout version that compares the proposed BED Order of Appointment with the version attached to this Proposal for Decision.⁸

I recommend fourteen substantive changes to the proposed BED Order of Appointment.

First, as proposed, the first sentence of the Introduction states that the term of the Appointment will be from the date the Order of Appointment is issued until December 31, 2021. However, I believe the parties' intent was that the Appointment term should extend through calendar year 2021, not only until December 31 of that year. Therefore, I recommend that the Board replace the word "until" with the word "through" in the first sentence of the Introduction.

Second, Section II.3.B of the proposed Order of Appointment provides that the magnitude of heating-and-process-fuel efficiency services provided by BED "is acknowledged to be a function of the magnitude of financial resources made available by the Board for this purpose"

8. Technically, all of Appendix B is new since it was not attached to the proposed BED Order of Appointment. However, so that parties can see my revisions to Appendix B from VEIC's Order of Appointment, the VEIC version appears as plain text and my changes appear in redline/strikeout.

In addition, redline/strikeout versions of the spreadsheet attachments to the proposed Order of Appointment for BED are not attached to this Proposal for Decision. I am recommending replacing Attachment A in its entirety with the corrected version of Attachment A filed by BED on March 4, 2011, and I am not recommending any changes to Attachment B.

(italics omitted). However, currently the funds for such services are determined by statute, not by the Board. Therefore, I recommend that Section II.3.B be modified to read: "The magnitude of such services is acknowledged to be a function of the amount of financial resources made available by statute or by the Board for this purpose."

Third, Section II.7 of the proposed Order of Appointment discusses BED's participation in the regional forward capacity market ("FCM") as well as in proceedings that could modify the market itself. However, like the proposed VEIC Order of Appointment, this section does not include any requirements or expectations regarding BED's participation in the New England Power Pool ("NEPOOL") or Independent System Operator of New England, Inc. ("ISO-NE") proceedings that are not directly related to the FCM. When the Board issued VEIC's Order of Appointment, the Board modified this section to require VEIC to also "support the State of Vermont's efforts to secure resource parity for demand resources in regional electricity markets." It is not strictly necessary to include such language in BED's Order of Appointment since State law already requires Vermont electric distribution and transmission utilities to:

advocate for regional cost support for the least cost solution with equal consideration and treatment of all available resources, including transmission, strategic distributed generation, targeted energy efficiency and demand response resources on a total cost basis.⁹

However, in the interest of consistency among EEU Orders of Appointment, I recommend modifying the second sentence of Section II.7 to read:

BED shall also participate in any proceedings for the modification or further development of the market itself, and shall support the State of Vermont's efforts to secure resource parity for demand resources in regional electricity markets.

Fourth, Section II.10 refers to guidelines for EEU treatment of combined-heat-and-power systems "provided in Appendix B to this appointment." However, BED's filing did not include Appendix B. The Board's June 25, 2010, Order discussed the application of guidelines for combined-heat-and-power systems to EEUs generally,¹⁰ and in the Board's December 20, 2010, Order, it accepted the DPS's recommendation that the guidelines for combined-heat-and-power

9. Public Act No. 61, § 8 (2005 Vt. Bien. Sess.).

10. See, Order of 6/25/10 at 24-27.

systems be attached to individual Orders of Appointment, when appropriate.¹¹ Based on this information, I believe the parties intended to: (1) revise the guidelines for combined-heat-and-power systems that were Appendix B to the VEIC Order of Appointment so that they referred to BED instead of VEIC and reflected the fact that BED is the host distribution utility; and (2) attach the revised guidelines to BED's Order of Appointment. I have made these revisions, and attached Appendix B to the version of the BED Order of Appointment that I recommend the Board adopt. However, I specifically invite parties to address in their comments on this Proposal for Decision whether further changes would be appropriate, in light of the fact that BED is an electric distribution utility or as a result of the differences in the sizes of VEIC's and BED's EEU budgets.¹²

Fifth, Sections II.12.A and B of the proposed Order of Appointment refer to BED's long-term goals. I believe the parties intended to refer to the long-term goals of BED as an EEU, not to BED's long-term goals as an electric utility. To clarify this, I recommend that the first sentence of Section II.12.A be modified to read:

A reasonable level of applied research, development and demonstration if it finds that such actions are likely to lead to cost-effective solutions to meeting EEU long-term resource-acquisition goals and are necessary to advance the goals of sound product and program design over time.

I further recommend that Section II.12.B be modified to read:

The development and implementation of training and workforce development initiatives as appropriate, consistent with long-term EEU goals and objectives, including cooperative activities with Vermont educational institutions, vocational training, and continuing education; and/or

Sixth, finding 148 in the Board's November 24, 2009, Order in this proceeding provides that, under an Order of Appointment structure, expenses incurred by an EEU for efforts to seek alternative funding should be funded through a non-resource-acquisition ("NRA") compensation methodology. This concept is not incorporated into the proposed Order of Appointment. To address this issue, I recommend modifying the first sentence of Section III.2 so that it reads:

11. *See*, Order of 12/20/10 at 19-20.

12. For example, Appendix B contains dollar thresholds for incentives above which BED must provide notice and an opportunity for comment to the DPS. Currently these dollar thresholds are the same as for VEIC, even though VEIC's EEU budget is significantly larger than BED's.

BED costs that are to be treated as NRA costs (including expenses incurred by BED for efforts to seek alternative funding) shall be identified, with specific corresponding budgets for each activity, as part of the DRP process.

Seventh, the reference to Provision 4 in the last sentence of Section III.3 of the proposed Order of Appointment is unclear. This sentence describes three-year spending limits for resource-acquisition ("RA") and NRA activities that BED shall be subject to. I recommend the Board clarify the language in this sentence, consistent with what I believe to be the parties' intent, so that it reads:

BED shall not exceed three-year spending limits as defined in the DRP for RA or NRA activities, or for any other categories that may be designated by the Board (such as individual eligible NRA budget categories) without approval from the Board, unless funds are transferred that do not require Board approval as provided in Section III.4.

Eighth, Section III.4 describes the process to be followed if BED would like to transfer funds among eligible non-resource-acquisition budget categories. The first sentence in this section, which describes a threshold below which BED does not need Board approval to transfer funds, includes a reference to "that category" that is unclear. As a result, I recommend that the Board clarify this sentence, consistent with what I believe to be the parties' intent, so that it reads:

BED must request approval from the Board to transfer funds among eligible NRA budget categories, unless (1) the amount of the transfer is less than \$10,000, or (2) the amount transferred is less than 50% of the amount allocated to the category from which it is transferred and less than \$50,000.

Ninth, the second paragraph of Section III.5, which refers to revenues associated with regional capacity market activities, is unrelated to the first paragraph of that section, which refers to transferring funds between RA and eligible NRA budget categories. It appears that the second paragraph should have its own section number. Therefore, I recommend that the Board convert the second paragraph of Section III.5 into a new Section III.6 (renumbering the following sections accordingly).

Tenth, Section III.6.A provides that BED will submit a report to the DPS that establishes its claim regarding its quantifiable savings for the previous year. It is possible that some savings may not be measurable each year (for example, in the 2003-2005 performance period, one of BED's performance indicators measured an increase in market share of Energy Star housing from

the baseline to the third year of the contract period), and the Order of Appointment language should allow for this possibility. In addition, BED should submit its report that establishes its savings claim for the previous year to the Board as well as the DPS. Therefore, I recommend that the first sentence of this Section be modified to read as follows:

By May 1 of each year, BED shall submit a report to the Board and the DPS that establishes its claim regarding its quantifiable savings (e.g., MWh, Total Resource Benefits ("TRB"), MMBtu, and other measures as may be developed from time to time) for the previous year for those savings which can be measured for that year (some market transformation QPIs may only be able to be measured over a multi-year period).

Eleventh, as proposed by the parties, the last sentence of Section III.6.B provides an opportunity for BED and other parties to comment on the DPS's recommendation to the Board regarding BED's savings claim for the previous year. However, this section does not include a deadline for such comments to be filed. Since there is only one month between the date that the DPS will file its recommendation and the date by which the Board must issue its determination regarding BED's achieved savings, I recommend that the Board insert a filing deadline for comments on the DPS's recommendation. While, to the best of my knowledge, the parties have not discussed such a deadline, I believe establishing such a deadline is consistent with their intent as evidenced by the fact that the proposed Order of Appointment specifies deadlines for all other steps in the documentation and verification process. In addition, the Board established such a deadline in VEIC's Order of Appointment. Therefore, I recommend that the Board convert the last sentence of Section III.6.B into a new Section III.6.C (renumbering the following sections accordingly) that reads: "By August 15 of each year, BED or other interested parties may offer comments on the Department's recommendation to the Board."

Twelfth, as proposed by the parties, Section 4 of Appendix A to the proposed Order of Appointment currently reads: "During the Transition Period, BED may extend the scope of EEU services as specified in the Appointment, but only to the extent they are able to do so with currently available resources." To a reader unfamiliar with the parties' discussions during this proceeding, this sentence could be confusing because it does not indicate what the starting point is for any extension of the scope of EEU services. To clarify what I believe to be the parties' intent, I recommend modifying Section 4 to read:

During the Transition Period, BED may extend the scope of EEU services beyond their historical scope, but only to the extent it is able to do so with currently available resources.

Thirteenth, as proposed by the parties, Section 6 of Appendix A to the proposed Order of Appointment currently reads:

The total reimbursement paid to BED by the EEU Fund Fiscal Agent under this Appointment may not exceed the amount that would cause total payments from the Fiscal Agent to BED from January 1, 2009 through December 31, 2011, to exceed \$6,138,803.00, unless otherwise approved by the Board.

However, I believe the parties' intent was that the dollar amount specified in this Section would include all payments for the work BED performed from January 1, 2009, through December 31, 2011, even though payment for work performed at the very end of this time period would not be made until 2012. Therefore, I recommend that the Board modify Section 6 of Appendix A to the proposed Order of Appointment so that it reads:

The total reimbursement paid to BED by the EEU Fund Fiscal Agent under this Appointment may not exceed the amount that would cause total payments from the Fiscal Agent to BED for work performed from January 1, 2009, through December 31, 2011, including all payments made prior to this Appointment for work performed during this period, to exceed \$6,138,803.00, unless otherwise approved by the Board.

Finally, I recommend replacing the version of Attachment A that was attached to the proposed Order of Appointment with the version of Attachment A that was filed by BED on March 4, 2011 (exh. BED-9). As BED noted in its March 4 filing, the original version of Attachment A contained an arithmetic error that has been corrected in the March 4 version.

V. CONCLUSION

In this Proposal for Decision, I recommend that the Board issue the attached Order of Appointment to BED. In addition, I specifically ask parties to comment on whether further revisions should be made to the guidelines for combined-heat-and-power systems that were Appendix B to the VEIC Order of Appointment and that I have modified and included as Appendix B to the attached BED Order of Appointment.

Dated at Montpelier, Vermont, this 7th day of April, 2011.

s/Ann Bishop

Ann Bishop
Hearing Officer

VI. BOARD DISCUSSION

BED and the DPS filed comments on the Proposal for Decision on April 4, 2011, and April 6, 2011, respectively. Both BED and the DPS support the Proposal for Decision, including the Hearing Officer's recommended changes to the Order of Appointment for BED. No other party filed comments on the Proposal for Decision.

In the Proposal for Decision, the Hearing Officer specifically asked parties to comment on whether further revisions should be made to the guidelines for combined-heat-and-power systems that were included as Appendix B to the VEIC Order of Appointment and that she modified and included as Appendix B to her proposed BED Order of Appointment.

BED responds that there is value to a consistent approach to this activity between BED and Efficiency Vermont. In addition, BED asserts that those parts of Appendix B that apply to a distribution utility that also serves as an EEU provide helpful guidance. BED does not recommend any revisions to the version of Appendix B that was attached to the Proposal for Decision.

The DPS recommends modifying the initial sentence of Appendix B to clarify that the guidelines apply to BED as an EEU and not as a distribution utility. The DPS recommends that the beginning of this sentence be modified to read "BED, when assuming its role as the Energy Efficiency Utility in its service territory, shall use the following guidelines to respond"

There is value to clarifying that the guidelines in Appendix B apply to BED as an EEU and not as a distribution utility. As the DPS notes, such a clarification should help avoid any confusion at a later point in time. For this reason, we conclude that the initial sentence of Appendix B should be modified. However, to clarify that the guidelines apply whenever BED acts as an EEU, and not just at the time it initially assumes its role as an EEU, we determine that the beginning of the initial sentence of Appendix B should be modified as follows: "BED, when acting as the Energy Efficiency Utility in its service territory, shall use the following guidelines to respond"

We commend BED and the other parties to this proceeding for their thoughtful engagement on the myriad issues addressed in the Order of Appointment originally proposed by BED. We also appreciate BED's and the DPS's thorough review of the Proposal for Decision and

its attachments, particularly since the Hearing Officer recommended numerous changes to the proposed BED Order of Appointment. In addition, we commend the Hearing Officer for her work; as BED noted, the Hearing Officer provided "timely guidance and excellent suggestions"¹³ throughout this process.

After reviewing these documents and the parties' comments, we conclude that the Proposal for Decision is reasonable and should be approved, with the modification to Appendix B discussed above.

VII. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and conclusions of the Hearing Officer are adopted, except as modified above.
2. The attached Order of Appointment, which has been modified to be consistent with this Order, shall be issued to the City of Burlington Electric Department ("BED"). The term of the Appointment shall be from the date of this Order through December 31, 2021.
3. This Docket shall be closed.

13. Letter of April 4, 2011, from William Ellis, Esq. to Susan Hudson, Clerk of the Board.

Dated at Montpelier, Vermont, this 19th day of April, 2011.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: April 19, 2011

ATTEST: s/Judith C. Whitney
Deputy Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.